HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1209 of year 2003 (S/S)

Dharmendra Kumar

Versus.

D.C.M.Sugar Mills Ltd. and others

Approved for reporting.

~~Not approved for reporting~~

Date of decision 10.10.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1209 of 2003 (S/S)

Dharmendra Kumar ……Petitioner

Vs.

D.C.M Sugar Millas Ltd. And others ……..Respondents

Counsel for the petitioner Shri Jagdish Prasad
Counsel for the respondent Shri B.D. Kandpal

Dated: 10-10-2003

Hon'ble Rajesh Tandon, J.

By the present Writ Petition the petitioner has prayed for a writ, mandamous directing the respondent to appoint the petitioner on the compassionate ground.

Brief facts giving rise to present the writ petition are that Shri Harpal Singh the father of the petitioner has passed intermediate examination in the year 1966 and has also passed B.T.C. He was working as Scout Master and attended Scout Rally organized in year 1978.

According to the petitioner Sh. Halpal Singh was appointed as teacher in the factory on 23.8.1973. He died while he was in service on 8.5.1981. He has left with him his widow, two daughters and two sons.

The petitioner was born on 8.3.1980 and at present he is of 23 years old and has passed High School examination in 1988 and intermediate in the year 2000 and at present studying in B.A part II

Counsel for the petitioner has state that the petitioner was only one year two months old and on attaining majority he has represented to the respondents on 17.2.2000,27.11.2000 and on 22.8.03 for giving appointment under the provisions of Dyeing in Harness Rules 1972.

Shri Jagdish Prasad counsel for the petitioner has referred rule 5 of the U.P. recruitment of defendant of Government several Dyeing and Harness rule of 1974.Rule 5 reads as under:-

"Recruitment of a member of the family of the deceased –(1) *In case of Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government or a Corporation owned or controlled by the Central Government or a State Government , one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall on making an application for the purposes, be given a suitable employment in Government Service on a post except the post which is within the purview of the Uttar Pradesh public Service Commission, in relaxation of the normal recruitment rules if such person-*

(1) fulfils the educational qualifications prescribed for the post,

(2) is otherwise qualified for employment service, and

(3) makes the application for employment within five years from the date of the death of the Government servant:

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment cause undue hardship in any particular case, it may dispense with or relax the requirements as it may consider necessary for dealing with the case in a just and equitable manner."

Counsel for petitioner has claimed the benefit of rule 5 which provides that the period of five years shall be taken from the date of the death of the government servant can be relaxed in a equitable manner.

There is no quarrel with the preposition that the object of the rule is to provide the employment to the family of the person who died in harness.

Reliance was placed by the counsel for petitioner on the case law of Smt Pushp Lata Dixit V. Madhyamic Shiksha Parishad and others 1991ALR Page 509. The case is distinguishable in as much as it was a case where wife was to be accommodated therefore the facts are quite different.

Shri Jagdish Prasad Advocate has placed reliance on the judgment of AIR of 1998 SC P -295 to the following effect:-

"We are of the view that the state has obligation to provide facilities and opportunities to the people to avail of the right to education. The private institutions cater to the needs of the educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the Government."

The aforesaid case is not applicable to the facts of the present case.

Sh. Jagdish Prasad has also referred the case of 2001 (1) of the madras High Court of G.Vijayaraghavan Vs. General Manager (Personnel),Indian Bank Head Office, Chennai and another page No-363, where it has been held that the latches will not come in the way of the petitioner. The facts of the case are quite distinguishable. As will appear from the following observations:-

"The Hon'ble Supreme Court has set aside the interpretation made by the High Court and held that if the family members of the deceased employee can manger for fourteen years after his death, one of his legal heirs cannot put forward a claim as though it is line of succession by virtue of right f inheritance. She also very much relied upon another decision of the Supreme Court namely. (1997) 11 SCC 390, Managing Director, MTC Ltd. Vs.Pramoda Devi Wherein the Lordships of the Supreme Court have held that compassionate appointment is to enable the penurious family to tide over the sudden crisis and is not to provide employment."

In the case of madras the husband has died on 7-6-1981 and the mother has made the representation on 14-10-1981. In the same judgment there is a reliance of the judgment of the Apex Court in Managing Director,MMTc, New Delhi and another Vs. Pramoda Dei Alias Nayak (1997) 11SCC Page NO.390 where it has been held that compassionate appointment enables the family to tide over the sudden crises and is not to provide employment. The observations are quoted below:-

"The High Court has proceeded on the basis that rehabilitation appointment has to be given in all cases where it becomes due because of death of an employee in harness or by his permanent disability and it can be refused only in certain circumstances as indicated by the High Court. In our opinion, the discretion of the competent authority cannot be thus fettered. As pointed out by this Court, the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment and that mere death of an employee does not entitle his family to compassionate appointment."

In view of the Judgment of the Apex Court referred above 1997 Vol. (11) SCC P-390 Managing Director Vs. Delhi no case of the petitioner is made out for getting the Compassionate appointment after the death of the father.

The Counsel for the petitioner has referred the judgment of Santosh Kumar Vs. State of UP (H.C) 2003 (50) ALR 573 where the claim has been rejected .The following observations are:-

Paragraph-*5"The respondents have now decided the aforesaid application of the petitioner by the order dated 19th February, 2002 which is an order passed by the Joint Secretary of the Government of Uttar Pradesh , whereby the petitioner's application for appointment under the Dying- in Harness Rules was rejected on the ground that according to Rule 591) (3) of U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, the application for appointment must be made within a period of five years from the date of death of the concerned employee though, according to the aforesaid rules, power of relaxation is also there, but the petitioner's application was rejected as the same was field beyond the period of five years from the date of death of his father and no case has been made out for relaxation and therefore, the application of the petitioner was rejected."*

Paragraph-6 *"This direction as stated above, was passed by the Joint Secretary addressed to the Deputy Inspector General of Police (Establishment) UP , Allahabad and the Commandant 34 P.A.C. Battalion, Varanasi and the consequential order was passed by the Commandant , 34 P.A.C. Battalion , Varanasi on 5th October 2002 rejecting the petitioner's application for appointment under the Dying-in-Harnass Rules.*

Paragraph-7 *"Learned standing Counsel has relied upon the decision of the learned single Judge of this Court passed in Civil Misc. Writ Petition 6560 of 2000 decided on 26th March, 2001. Parvati Devi W/o Late Sri Nandu Ram V. State of U.P and other, which petition was filed by the wife of the deceased employee, which was ultimately dismissed by this court as not pressed in view of the statement made by the learned counsel for the petitioner at Bar. Learned standing counsel has further relied upon the decision in Sanjay kumar V. State of Bihar and other .Paragraph 3 of the said judgment of the Apex Court is relevant which is quoted below:-*

" We can unable to agree with the submission of the learned senior counsel for the petitioner. This court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread-earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Educating V. Pushpendra kumar, (supra). It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.88, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

In Haryana State Electricity Board Vs. Krishna Devi 2002(2) UP Local bodies and education page-1283 where also the Apex Court has observed that appointment is not a matter of right. The observations of the Apex Court are quoted below:

"It is well-settled that employment on compassionate ground is given only on pure humanitarian consideration and no appointment can be claimed as a matter of right. The main object was to provide immediate financial help to the family of the deceased employee. It is also well-settled that employment under compassionate ground cannot be made in absence of rules or instructions issued by the Government or any public authority."

"Admittedly the application was made by the respondent after a lapse of eight years of death of her husband. At what time there was no rule for such an employment. Subsequently, however, in the year 1985 the appellant board issued a circular framing scheme for such employment to the dependents of the deceased work-charged/daily wage employees. The husband of the respondent died in the year 1984 but at that time, the above scheme was not available."

"As the application for employment of her son on compassionate ground was made by the respondent after eight years of death of her husband, we are of the opinion that it was not to meet the immediate financial need of the family. The High Court did not consider the position of law and allowed the writ petition relying on an earlier decision of the High Court."

"In view of the above settled position of law and as the application was field after eight years of the death of her husband, we are of the opinion that the impugned order is not sustainable. If the impugned order is allowed to stand, the purpose of making appointment on compassionate ground would frustrate. Consequently, the impugned order is set aside and the appeal is allowed. No Costs.

In Bhola Yadav Vs. State of U.P. and others 2003 FLR (98) FLR 2641 after relying upon the judgment of the Apex Court has held as under:-

"In Jagdish Prasad Vs. State of Haryana,[1996(1)SLR(SC)] the question of appointment on compassionate ground to an applicant who was four years old at the time when his father, an ex-employee died in harness came up for consideration before the Apex Court . It was contended that since the appellant therein was minor when the father died in harness, the compassionate circumstances having continued till the date he made an application for appointment, he was entitled to be appointed on compassionate ground. The contention was met with disapproved by the Supreme Court in the following words:-

"The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred was back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased Government servant which cannot been encouraged, de-hors the recruitment rules."

"It is settled law that compassionate appointment, under Dyeing in Harness Rules should not be given after long years of death of the father vide Umesh Kumar Nagpal Vs. State of Haryana, [1994(68) FLR 1191(SC)] ,S. Mohan Vs. Government of T.N,[1998 (9)SCC 485], H.S Srivastava V. State of U.P[1990(61)FLR693 (ALL),U.P.S.R.T.C Vs. A.K Misra,[1995(1)UPLBEC 2047(SC)] Haryana State Electricity Board Vs. Naresh Janwar,[1996(72)FLR819(SC)] etc. The very purpose of compassionate appointment on the death of an employee is that there may be immediate financial crisis in the family, and some financial help is necessary . Since the petitioner's father died long ago that

financial crisis is over, and now there is no question of granting appointment to the petitioner under the Dying in Harness Rules in view of the above decisions."

Similarly in 2003 FLR 856 relying upon the judgment of Umesh Kumar Nagpal Vs. State of Haryana and others 1994 (68) FLR1191 (SC) it has been held as under:-

"Reasonable time h as been signified to mean such length of time as may fairly, and properly, and reasonable be allowed or required, having regard to the nature of the act of duty and to the attending circumstances. In the instant case, it does not appear from the conspectus of the facts that the petitioner was justified in making application after a lapse of 19 years. As a matter of fact, he was ineligible for consideration and according to his own showing, after he attained majority he applied for compassionate appointment. By this reckoning, there was no rational basis to relax the rigours of time-limit as envisaged in the rule afforested. Yet another aspect is the absence of penurious condition of the family. The petitioner does not claim that the family is still trapped into penury. Besides the death of a person dying in harness cannot be exploited by the deceased family to its advantage to claim compassionate appointment at any point of time in future. The Court must decry it as immoral to convert such crisis into an opportunity and it cannot be approved that the heirs of the deceased should be at liberty to claim compassionate appointment, which would virtually amount to a king of reservation in favour of dependents of the deceased employees. As stated supra, compassionate appointment is an exception carved out in the interest of justice to enable the family to tide over the sudden crisis and such exception cannot be stretched and magnified beyond all proportions to be applied in all circumstances and in all cases of dying in harness. In the above conspectus, I converge to

the view that the impunged order does not suffer from any taint and it was rightly passed in accordance with law."

In the present case rule 5 gives only to extent to avail the facility within a period of 5 years and the time given can be relaxed to the extent of some possible delay but it cannot be treated to keep a post vacant for the time to come when the son will become major. Article 16 of the Constitution of India therefore cannot be applied in such circumstances when the son was a minor at the time of the death of his father.

It has been held in Sanjay Kumar Vs. State of Bihar and others AIR 2000 SC page 2782. The observation are quoted below:-

"The petitioner was 10 years old when his mother died, while she was working as Excise Constable. The petitioner made an application on 2-6-1988, soon after the death of his mother, seeking compassionate appointment. That was rejected on 10-12-1996, as time-barred. A fresh application was filed on 26-12-96 and that was also rejected on 21-4-1997 for the same reason. Against the said order, the petitioner moved the High Court. The learned Single Judge of the High Court dismissed the writ petition on 24-8-99 and the said judgment was affirmed by the Division Bench on 10-3-2000. Against that order that this SLP has been preferred."

We are unable to agree with the submissions of the lenred senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education Vs. Pushpendra Kumar supra. It is also significant to notice that on the

date when the first application was made by the petitioner on 2-6-88, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

In Santosh Kumar Vs. State of U.P. ALR 2003 page 573 the Apex Court has observed that compassionate appointment is intended to keep the family of the deceased employment to tide sudden crises, it cannot be extended to keep a reservation of the vacancy till such time as the person become major after the number of years. The observations of the Apex Court are quoted below:-

"Learned Standing Counsel has relied upon the decision of the learned single Judge of this Court passed in Civil Misc. Writ Petition 6560 of 2000 decided on 26th March, 2001 . Parvati Devi W/o Late Shri Nandu Ram Vs. State of U.P and others, which petition was filed by the wife of the deceased employee, which was ultimately dismissed by this Court as not pressed in view of the statement made by the learned Counsel for the petitioner at Bar. Learned Standing Counsel has further relied upon the decision in Sanjay Kumar V State of Bihar and others [200 (87) FLR 132 (SC)]. Paragraph 3 of the said judgment of the Apex Court is quoted below:-

"We are unable to agree with the submission of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employees to tide over sudden crisis resulting due to death of the bread-earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the

very decision cited by the petitioner in Director of Education Vs. Pushpendra Kumar,(supra). It is also significant to notice that on the date when the first application. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

"In view of what has been said by the Apex Court with regard to appointment under U.P Recruitment of Dependants of Government Servants Dying in Harness Rules and in view of the reasons given in the impugned order rejecting the Petitioner's application, for compassionate appointment, the order impugned in the present writ petition does not warrant any interference by this Court in exercise of its power under Article 226 of the constitution of India."

In the light of the aforesaid judgment of the Apex Court the petitioner is not entitled to claim the benefit of the U.P. Recruitment of dependants of government servants Dying in Harness Rules, 1974.

Apart from the aforesaid facts counsel for the respondent has also brought to the notice of the court that the amendment in Rule 5 was brought by the legislature 20 January 1999 by providing 5 years of period. In the present case the father of the petitioner had expired on 8 may 1981 and the petitioner was born on 8 march 1980 and as such the amendment made in the year 1999 for the employment within a period of 5 years will not be applied in the present case as there is no retrospective operation of the same.

Consequently it is well settled that object of the legislature while introducing of compassionate appointment is intended to avoid the immediate hardship and distress caused to the family by sudden demise of the earning members of the family.

Consequently the writ petition fail and is dismissed. There will be no order as to costs.

(Rajesh Tandon, J.)

Dated: 10.10.2003
Mohit